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April 7, 2014

VIA MESSENGER

Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 6782
Mark Pryor for U.S. Senate and Bob Edwards, Treasurer

Dear Mr. Jordan:

We write as counsel to Mark Pryor for U.S. Senate ("the Committee") and Bob Edwards, in his official capacity as Treasurer (collectively, "Respondents") in response to the complaint filed by Mr. Justin Meeks on February 18, 2014 ("the Complaint").

The Complaint alleges that the Committee reserved air time for two advertisements entitled "Linda" and "Courtney" (collectively, the "Advertisements"), that failed to comply with Federal Election Commission rules, because the image of Senator Pryor that appeared on screen during the "stand by your ad" disclaimer did not take up at least eighty percent of the vertical screen height.

The Complaint should be promptly dismissed. The law does not require that the image of the candidate that accompanies the "stand by your ad" disclaimer be a particular size; it only requires that the image be "clearly identifiable," as was the image in the Advertisements. The Advertisements included all of the other required spoken and written disclaimers, so the public was not deprived of any meaningful disclosure. And as soon as questions were raised about the size of the image, the Committee, on its own initiative and before the filing of the Complaint, added a full-screen image of Senator Pryor to the Advertisements. As the Commission has done in similar matters in the past, the Commission should dismiss this matter and take no further action against the Respondents.

I. Factual Background

The Committee is the principal campaign committee of Arkansas Senator Mark Pryor. To produce its television advertisements in connection with the 2014 election, the Committee retained an outside media vendor with experience producing advertisements for federal campaigns.¹ The Advertisements contained (1) a spoken statement by Senator Pryor stating "I'm Mark Pryor and I approve this message," (2) a written disclaimer stating "Approved by Mark Pryor. Paid for by Mark Pryor for U.S. Senate" that appeared on screen for the last four seconds of the Advertisements and (3) an image of Senator Pryor that appeared during the last four seconds of the Advertisements in the lower left-hand corner of the screen, next to the written disclaimer. The Advertisements began airing on February 6, 2014.²

On February 13, the Committee received an email from a blogger, in which the blogger opined that the Advertisements did not comply with Commission rules because the image of Senator Pryor that appeared in the advertisement did not take up eighty percent of the vertical screen height.³ To remove any doubt about its compliance with the law, the Committee promptly asked its vendor to edit the Advertisements to include a full-screen image of Senator Pryor during the last four seconds of the advertisement. The new advertisements were sent to stations on the next day, February 14.⁴ Mr. Meeks' complaint was not filed with the Commission until February 18, several days after the updated advertisements were already on the air.

II. Discussion

A. The Advertisements complied with the Federal Election Campaign Act's disclaimer requirements and clearly identified that Senator Pryor approved them.

The Federal Election Campaign Act of 1971, as amended (the "Act") requires that television communications paid for by a candidate or his authorized committee must contain a statement, spoken by the candidate and in writing, that the candidate approved the communication. The statement may be conveyed either by (1) "an unobscured, full-screen view of the candidate making the statement, or (2) the candidate in voice-over, accompanied by a clearly identifiable photographic or similar image of the candidate."⁵ Commission rules provide that a photographic image "shall be considered clearly identified if it is at least eighty (80) percent of the vertical

¹ Affidavit of Paul Johnson, ¶ 2, attached as "Attachment A."

² *Id.* ¶ 3. Videos of the Advertisements as they were originally aired can be viewed at <https://www.youtube.com/watch?v=43OwZnK1ddQ> and <https://www.youtube.com/watch?v=MiskpgUMfT0>.

³ Affidavit of Paul Johnson, ¶ 4.

⁴ *Id.* ¶ 5.

⁵ 2 U.S.C. § 441d(d)(1)(B)(i).

screen height.”⁶ However, in passing the rule, the Commission recognized that the statute imposed different requirements for video footage of a candidate speaking the “stand by your ad” statement and photographs of the candidate; while the first requires a “full-screen view,” the second omits any size requirement, requiring only that the photographic image of the candidate be “clearly identifiable.” Accordingly, the Commission included the “eighty percent” language in the rule only as a safe harbor, rather than a legal requirement.⁷

Although the original version of the Advertisements did not include a full screen depiction of Senator Pryor making the required “stand by your ad” statement or an image of Senator Pryor that took up eighty percent of the vertical screen height, the Advertisements contained an image of Senator Pryor at the bottom of the screen, that was clearly identifiable as such. Moreover, the Advertisements contained disclaimers that sufficiently conveyed the fact that Senator Pryor approved the Advertisements and identified Senator Pryor’s campaign committee as the sponsor. The Advertisements contained: (1) a spoken statement by Senator Pryor stating “I’m Mark Pryor and I approve this message,” and (2) a written disclaimer stating “Approved by Mark Pryor. Paid for by Mark Pryor for U.S. Senate” that appeared on screen for the last four seconds of the Advertisements. These written and spoken disclaimers, coupled with the photograph of Senator Pryor, plainly communicated the fact that Senator Pryor approved the Advertisements, so that the public was not deprived of any meaningful information about the sponsorship of the Advertisements.

In the past, the Commission has received complaints similar to the one here, and has dismissed them. For example, in MUR 6016, a matter with facts virtually identical to those here, the complaint alleged that a committee’s advertisement violated the rules because the disclaimer contained a photograph of the candidate that appeared in the lower right corner of the advertisement next to the written disclaimer.⁸ The advertisement contained the required written and oral disclaimers (“Paid for by Doug Ose for Congress” and “I am Doug Ose, and I approved this ad”), accompanied by the above-described photograph of the candidate.⁹ The Commission dismissed the matter because “[i]t appear[ed] from the disclaimers that were provided in the advertisement, coupled with the photograph of the candidate, that the public would not have been misled [sic] as to who paid for the advertisement.”¹⁰ Similarly, in MUR 6116, the Commission dismissed a complaint alleging a violation of the same vertical screen height requirement because the advertisements at issue contained sufficient verbal and written disclaimers that

⁶ 11 C.F.R. § 110.11(c)(3)(ii)(B).

⁷ *Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds; Final Rule*, 67 Fed. Reg. 76,962, 76,966 (Dec. 13, 2002).

⁸ MUR 6016, Complaint (May 20, 2008).

⁹ *Id.*

¹⁰ MUR 6016, General Counsel’s Report at 2 (Oct. 7, 2008).

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prevented the public from being "misled as to who paid for the advertisements."¹¹ The Commission should do the same here.

B. The Committee remedied any error *sua sponte* before the Complaint was filed.

Even if the Commission were to conclude that the Advertisements violated the Act's sponsorship identification requirements, the Complaint should be dismissed because it was filed after the Committee self-corrected any alleged error. As described above, on February 13, the Committee received an email that questioned the Advertisements' compliance with the rules. On the same day, the Advertisements were edited to include a full-screen image of Senator Pryor during the last four seconds of the Advertisements. By the time the Complaint was filed with the Commission on February 18, television stations were already airing the updated advertisements.

In the past, the Commission has dismissed matters against respondents who have corrected alleged disclaimer violations prior to the filing of a complaint.¹² As recently as January of this year, the Commission dismissed a complaint alleging failure to include the proper disclaimer on a campaign website.¹³ Among other things, the Office of General Counsel noted that "it [did] not appear that the [respondent's] website lacked the requisite disclaimer at the time the [c]omplaint was filed."¹⁴ The Commission should take the same approach here.

III. Conclusion

For the reasons described herein, we respectfully request that the Commission dismiss this matter and take no further action.

Very truly yours,



Marc E. Elias
Andrew H. Werbrock
Counsel to Respondents

¹¹ MUR 6116, General Counsel's Report at 2 (June 25, 2009). See also MUR 6260, General Counsel's Report at 3 (May 24, 2010) (dismissing complaint alleging disclaimer error because the "communications contained sufficient identifying information to prevent the public from being misled as to who paid for them" and the violations of the Act "appear[ed] to be technical in nature").

¹² See e.g., MUR 6610, FEC Factual and Legal Analysis n.4 (Jan. 24, 2014); MUR 5148, Response from Nebraska Republican State Central Committee and Stenberg for Senate 2000 (Dec. 18, 2000) and Statement of Reasons (May 7, 2001). The Commission has taken a similar approach outside of the disclaimer context. See, e.g., MUR 6140, First General Counsel's Report at 7 (June 19, 2009); MUR 5005, Notification to Complainant (Dec. 6, 2000).

¹³ MUR 6610, FEC Factual and Legal Analysis, n.4 (Jan. 24, 2014).

¹⁴ *Id.* at 3.